

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alfred Visco,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 02-01-029
(Filed January 23, 2002)

**SCOPING MEMO AND JOINT RULING OF
ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure, this ruling sets forth a procedural schedule, assigns a presiding officer and addresses the scope of the proceeding following a telephone prehearing conference (PHC) held on April 24, 2002, by Administrative Law Judge (ALJ) Sullivan.

Background

Alfred Visco, Esq. (Visco), complainant, and the Southern California Edison Company (Edison), defendant, dispute responsibility for problems arising from the installation of Time Management Load Control (TMLC) devices on two groves in the area of Temecula. Visco alleges that the devices did not function properly and led to subsequent billing for summer “on peak” electric service to the groves. Visco asks for rescission of the contracts, removal of the

TMLC devices, restitution of all money paid to Edison concerning the installation of the devices, elimination of all summer peak usage charges and late fees, and a reimbursement of reconnection fees. In conjunction with the complaint, Visco deposited \$2,445.29 with the Commission.

In response, Edison, denies the substance of Visco's complaint. In addition, Edison charges that the complainant has failed to allege "any act or thing done or omitted to be done by SCE"¹ as § 1702² requires. Edison also alleges that the complaint fails to state facts sufficient to constitute a cause of action for relief against Edison. Further, Edison states that it has acted in accordance with its tariffs. In addition, Edison alleges that the TMLC devices work properly, and that the divergence between the service provided and Visco's expectations results from actions by Visco or his agents that bypass the "normal, proper and designed" operation of the TMLC devices. Edison details the steps that it has taken to ensure proper operation of these devices. Finally, Edison concludes that Visco owes Edison for electric service and that Edison has a lawful basis for demanding payment.

At the telephonic PHC, parties discussed the dispute and developed a plan to manage this proceeding. We discuss this plan below.

Scope of Proceeding

Based on the pleadings to date and the representations of the parties at the PHC, the dispute is whether Edison has provided electric service consistent with its tariffs and the contracts for service entered into by Edison and Visco. There

¹ Edison, Answer to Complaint, March 15, 2002, p. 2.

² Unless stated otherwise, all statutory references are to the Public Utilities Code.

are many facts in dispute concerning disparities in the service offered, service expected, the service received and the source of these disparities. These facts bear upon the ultimate question of whether Edison acted consistent with its tariffs.

Parties should limit their testimony at the evidentiary hearings to matters involving disputed issues of fact. Testimony that presents legal or policy argument may be stricken. Parties will have an opportunity to address matters of law and policy in briefs.

Discovery

As mentioned at the PHC, discovery has commenced and continues through June 19, 2002. Parties may make reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion.³ Any discovery disputes which the parties cannot resolve between themselves, after good faith efforts to meet and confer, may be brought to ALJ Sullivan, who may rule himself or refer the dispute to the Commission's Law and Motion ALJ. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes.

³ Parties making discovery requests on June 19, the last day for discovery, must arrange for overnight delivery of these discovery requests. Responses to data requests dated June 19 are due by June 26 and must be served by overnight delivery.

Schedule

The schedule for this proceeding is as follows:

April 24, 2002 to June 19, 2002	Discovery
June 14, 2002	Opening Testimony (served)
July 1, 2002	Reply Testimony (served)
July 11, 2002 at 9:30 a.m.	Evidentiary Hearings Public Utility Commission Courtroom State Office Building 320 West 4 th Street, Conference Room 5A Los Angeles, CA 90013
August 10, 2002	Concurrent briefs filed and served 30 days after conclusion of evidentiary hearings
August 30, 2002	Concurrent reply briefs filed and served 20 days after initial briefs, whereupon the case is submitted
....	Presiding officer's decision filed within 60 days of submission
....	Presiding officer's decision becomes effective 30 days after mailing (unless appeal filed per Pub. Util. Code § 1701.2(a) and Rule 8.2.)

The evidentiary hearings will commence at 9:30 a.m., on July 11, 2002, at the Commission's Los Angeles courtrooms at 320 West 4th Street, in Conference

Room 5A.⁴ The parties may make short opening remarks at the opening of the evidentiary hearing, focusing on the critical facts that the upcoming testimony will demonstrate. Prepared written testimony shall be served on parties and on the ALJ.

The briefing schedule, which is set in the table above, may be reconsidered at the evidentiary hearings. This proceeding shall be resolved within the 12-month timeframe set for the resolution of adjudicatory proceedings.

Prehearing Meet and Confer

No later than 10:00 a.m., on July 8, 2002, the parties are to meet by phone or otherwise to discuss the following:

1. Issues to be addressed in the hearing, and specifically, whether any issues have been narrowed or amended since the filing of the complaint;
2. Proposed witness schedule;
3. Cross-examination time estimates; and
4. Exhibit Lists. Each exhibit list shall contain the name of the offering party and/or sponsoring witness. Each party is to exchange its exhibit list with the other party participating in the hearing. The exhibit list for the hearing should also include the nature of any objection to admission of an exhibit by any part or the statement of “no objection.” An annotated exhibit list should be included in summary filing described below.

⁴ Although current expectations call for hearings in Southern California, state budgetary constraints may necessitate an alternative arrangement.

All exhibits shall be pre-marked for identification. Visco will use 1-99 and Edison 100-199. Further requirements with respect to exhibits are set forth in Appendix B.

Following the July 8 meeting, Edison shall prepare a joint filing summarizing the above information. Both parties shall sign and make the filing by noon July 9, 2002. In addition, Edison shall e-mail a copy to ALJ Sullivan [tjs@cpuc.ca.gov] by noon on July 9, 2002

Category of Proceeding and need for Hearing

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer.

Assignment of Presiding Officer

ALJ Timothy J. Sullivan will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Codes § 1701.2(b) and Rule 7.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge (ALJ) Timothy J. Sullivan.
4. This ruling confirms that this proceeding is an adjudication scheduled for hearing.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

6. The official service list as of this date is attached to this ruling as Appendix A. All submission shall be served on those on the current service list as well as on the Assigned Commissioner and Assigned ALJ. Submission to the service list shall be provided by hard copy. Service to the Assigned ALJ should also be provided by e-mail (tjs@cpuc.ca.gov).

Appendix B contains directions concerning the preparation and identification of exhibits. Parties shall follow these directions.

Dated May 9, 2002, at San Francisco, California.

/s/ GEOFFREY BROWN
Geoffrey Brown
Assigned Commissioner

/s/ TIMOTHY J. SULLIVAN by PSW
Timothy J. Sullivan
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Joint Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated May 9, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

APPENDIX A
Service List

***** **APPEARANCES** *****

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CHRISTINE ROSSKOPF
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For: Southern California Edison

Alfred Visco
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***** **STATE EMPLOYEE** *****

Maria E. Stevens
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Timothy J. Sullivan
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(END OF APPENDIX A)

APPENDIX B

DIRECTIONS IN THE PREPARATION AND IDENTIFICATION OF EXHIBITS

EXHIBITS

Service of Exhibits

All prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

(END OF APPENDIX B)